

UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WISCONSIN

LARRY ANDREW PIATEK a/k/a
PETER JOSEPH BARDESON,

Plaintiff,

Case No. 04-C-851

v.

DAVID GRAVES, KURT PICKNELL,
MICHAEL SCHMITZ, JOHN DELANEY,
KEVIN HURST, DAVID BJORGE, and
WISCONSIN COUNTY MUTUAL
INSURANCE COMPANY,

Defendants.

OPINION AND ORDER

Larry Piatek, a prisoner in state custody, is suing five employees of Walworth County (Wisconsin) and the County's insurer, Wisconsin County Mutual Insurance Corporation¹ for denying him exercise, mail, cleaning supplies, warmth and twenty-four hour a day access to a mattress and bedding. Piatek was being held in the Walworth County Jail prior to his criminal conviction and sentencing. He is seeking monetary relief pursuant to 42 U.S.C. § 1983 for alleged violations of his First, Eighth and Fourteenth Amendment rights and says that he is suing the Defendants in their personal and official capacities. The Defendants have answered and have denied

¹ Defendants Health Professionals, Ltd., Elizabeth Peters, Essex Insurance Company and Dr. Brian Bohlman have been dismissed as parties to this action. See Order Dismissing Certain Defendants (filed September 14, 2005).

liability. After the deadline for the completion of discovery passed, Piatek and the Defendants filed cross motions for summary judgment on the ground that no material facts are in dispute and that the movant (or movants) are entitled to judgment as a matter of law. See Federal Rule of Civil Procedure 56.

The Defendants raised the defense of failure to exhaust administrative remedies as required by 42 U.S.C. § 1997e. The conditions of confinement of which Piatek complains occurred during the four times he was placed in administrative segregation following disciplinary proceedings. The record shows that the Plaintiff filed eight grievances during that time and that the grievances only pertained to the undisputed fact that the Defendants allowed him to have a mattress and bedding for only eight hours during each twenty-four hour period. Piatek has not established that he filed grievances about the remainder of his complaints and Piatek is now foreclosed from pursuing administrative remedies, because he is no longer an inmate at the Walworth County Jail.

Because 42 U.S.C. § 1997e requires prisoners to exhaust administrative remedies before filing suit, the issue arises as to whether the court must dismiss his Amended Complaint because he has not totally exhausted his remedies or whether the court can address the one exhausted claim. This week the United States Supreme Court granted a writ of certiorari in a case raising this issue. See Walton v. Bouchard, 136 Fed. Appx. 846 (6th Cir. 2005) cert. granted sub nom. Williams v. Overton, 2006 WL 521251 (U.S. March 6, 2006) (No. 05-7142). Therefore, this court will deny the pending motions and stay this action until this issue has been resolved.

For this reason, the court ORDERS that:

The "Walworth County Defendants' Motion for Summary Judgment" (filed November 15, 2005) IS DENIED without prejudice.

IT IS FURTHER ORDERED that the "Plaintiff's Motion for Summary Judgment" (filed November 15, 2005) IS DENIED without prejudice.

IT IS FURTHER ORDERED that this action is stayed. There appears to be no reason at this time to maintain this file as an open case for statistical purposes. Therefore, the court ORDERS that the Clerk of Court submit a JS-6 Form to the Administrative Office of the United States Courts, thereby closing this case for statistical purposes.

IT IS FURTHER ORDERED that nothing in this order shall be considered a dismissal or disposition of this matter and either party may reopen this case at any time by advising the court and opposing counsel in writing that the Supreme Court has issued an opinion in Williams v. Overton and that the parties are ready to proceed with the case.

Done and Ordered in Chambers at the United States Courthouse, Milwaukee, Wisconsin, this 8th day of March, 2006.

s/ Thomas J. Curran

Thomas J. Curran
United States District Judge